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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 431.

ALFRED TESTA and PAUL A. PORTER, Administrator, Office of Price Administration, *Petitioners*,

v.

HARRY KATT.

On Petition for a Writ of Certiorari to the Superior Court of the State of Rhode Island and Providence Plantations for Providence and Bristol Counties.

BRIEF FOR RESPONDENT IN OPPOSITION.

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BRIEF FOR RESPONDENT IN OPPOSITION.

STATEMENT OF THE CASE.

The facts as to the opinions below, the statute and regulation involved, and the proceedings in the state courts, are set out in the Petition for a Writ of Certiorari, pages 1, 4-6.

PRELIMINARY STATEMENT.

Respondent wishes to point out that, despite the emphasis which Petitioners' Brief lays on the relationship of this case to the price control program and the enforcement of the Emergency Price Control Act, the important and substantial issue in the case has to do with the delicate relationship between the states and the federal government—an issue transcending in significance any more transitory matters.

QUESTION PRESENTED.

Did the Rhode Island Supreme Court in defining the limits of the jurisdiction of the Rhode Island courts in this case so as to exclude an action brought by a consumer under § 205(e) of the Emergency Price Control Act in any way discriminate against a right created by the federal Constitution or by federal statutes?

ARGUMENT.

1. Each state may determine the limits of the jurisdiction of its own courts, and the character of the controversies which shall be heard in such courts, subject only to the qualification that the state may not discriminate against a federal right; *i.e.*, it may not refuse to entertain a cause of action solely because it is founded on a federal statute, or refuse to entertain a cause of action founded on a federal statute where it would entertain a similar cause of action founded on the common law or statutes of another state.[1]

2. The United States Supreme Court has no power to review a decision of a state court as to the scope of its

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[1] *Herb* v. *Pitcairn*, 324 U. S. 117; *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Taylor*, 210 U. S. 281; *Second Employers' Liability Cases* (*Mondou* v. *New York, New Haven & Hartford R. Co.*), 223 U. S. 1; *cf. McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230.

jurisdiction, except where a federal constitutional question is involved.[2]

3. The Rhode Island Supreme Court in this case decided only one question, *viz.*: that the Rhode Island courts do not have jurisdiction, under the statutes of Rhode Island, of causes of action based on the penal statutes of another jurisdiction. Whether or not the cause of action involved in the instant case arose out of a "penal" statute is a matter for the courts of Rhode Island to determine.[3] The United States Supreme Court cannot assume to overrule the Rhode Island Court on questions as to the jurisdiction of that court merely because a federal statute is involved. No federal question is presented unless some violation of federal constitutional rights is alleged.[4]

4. No violation of any constitutional right is presented in the instant case.

(a) The only constitutional provision apposite here[5] is Article VI, Clause 2: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

(b) The United States Supreme Court has made clear that the Supremacy Clause does not require a state to take jurisdiction of causes arising under federal law except

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[2] *Herb* v. *Pitcairn*, 324 U. S. 117; *St. Louis, I. M. & S. Ry. Co.* v. *Taylor*, 210 U. S. 281.

[3] See Restatement of Conflict of Laws, § 611; Beale, The Conflict of Laws, 86.

[4] *Herb* v. *Pitcairn*, 324 U. S. 117; *St. Louis, I. M. & S. Ry. Co.* v. *Taylor*, 210 U. S. 281.

[5] *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230, is not in point, since that case involved a violation of the privileges and immunities clause. All parties in the instant case are citizens of Rhode Island. Record, pp. 1, 2, 5.

"when its ordinary jurisdiction, as prescribed by local laws, is appropriate to the occasion."[6]. A state may decline jurisdiction of a federally-created cause of action if it does not, in so doing, discriminate against the latter; *e.g.*, where the distinction is between residents and non-residents.[7]

(c) It is not suggested that the Rhode Island Supreme Court has been guilty of any discrimination against federally-created rights in declining to enforce penal statutes of other jurisdictions. Indeed, it is conceded in Petitioner's Brief (page 7) that the rule as developed in Rhode Island was worked out in cases involving statutes of other states rather than of the United States.[8]

(d) The Supremacy Clause requires the judges of the state courts to recognize federal law in cases properly before them. It does not require the state to furnish a forum for the adjudication of rights under such law.[9] If the ordinary jurisdiction of the state courts does not comprehend cases of this sort, no violation of the Supremacy Clause is presented.

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[6] *Second Employers' Liability Cases*, 223 U. S. 1; see also *Herb* v. *Pitcairn*, 324 U. S. 117.

[7] *Douglas* v. *New York, New Haven & Hartford R. Co.*, 279 U. S. 377.

[8] *O'Reilly* v. *New York & N. E. R. Co.*, 16 R. I. 388, 17 Atl. 171, 19 Atl. 244 (Massachusetts statute); *Gardner* v. *New York & N. E. R. Co.*, 17 R. I. 790, 24 A. 831 (Connecticut statute); *McLay* v. *Slade*, 48 R. I. 357, 138 Atl. 212 (Massachusetts statute).

[9] See footnotes 6 and 7, *supra*. See also *Administrator of the Office of Price Administration* v. *Chook*, Mass. Advance Sheets (1946) 1013, decided September 13, 1946, in which the Supreme Judicial Court of Massachusetts held that the jurisdiction of the Massachusetts Superior Court did not comprehend a proceeding for the suspension of a license under § 205(f) of the Emergency Price Control Act. The result of this holding is that such proceedings cannot be brought in any court in Massachusetts—federal or state—except in those instances where the licensee is doing business in more than one state, or where his gross sales exceed $100,000 per annum, in which cases the federal District Court has jurisdiction under the statute. See also *Hopkins* v. *Barnhardt*, 223 N. C. 617; 27 S. E. (2d) 644.

(e) The Rhode Island court for almost 60 years has followed a policy of not enforcing penal rights under laws of other jurisdictions. In adopting and amending the statutes prescribing the jurisdiction of these courts, the Rhode Island Legislature has presumably recognized and approved this rule.[10]

(f) There is nothing arbitrary in the court's holding § 205(e) of the Emergency Price Control Act to be penal. Other courts have done the same, as indeed the petitioner admits in his brief.[11]

CONCLUSION.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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[10] Compare *Zuest* v. *Ingra*, 134 N. J. L. 15, 45A. (2d) 810, where the New Jersey Court of Errors and Appeals held that the New Jersey District Courts do not have jurisdiction of consumer actions under § 205(e) of the Emergency Price Control Act. The New Jersey statute (RS 2:8-40), N. J. S. A., provides that the District Court shall have jurisdiction of actions "to recover any penalty imposed or authorized *by any law of this state* . . ." (emphasis added).

[11] *Miller* v. *Municipal Court of Los Angeles*, 22 Cal. (2d) 818; *Stevenson* v. *Stoufer*, 21 N. W. (2d) 287 (Iowa); *Zuest* v. *Ingra*, 134 N. J. L. 15 45A. (2d) 810; compare *Bowles* v. *American Stores, Inc.*, 139 F. (2d) 377, cert. den. 322 U. S. 730 (App. D. C.); *Thierry* v. *Gilbert*, 147 F. (2d) 603 (C. C. A. 1st).

It should be emphasized that whether or not a consumer action under § 205(e) of the Emergency Price Control Act is penal is not an issue in this case, since that question is one for the court of the forum (Rhode Island) in the determination of its jurisdiction. See footnote 3, *supra*.

ACKNOWLEDGMENT OF SERVICE.

Receipt is acknowledged of copies of the Respondent's Brief in Opposition to petition for writ of certiorari.

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Solicitor General of the United States.

October 18, 1946.

AFFIDAVIT OF SERVICE.

Helen Melnick on oath says that she has this 18th day of October mailed a copy of the foregoing brief to Arthur N. Votolato, Esq., Hosp. Tr. Bldg., Providence, R. I., Attorney for petitioner.

.....

HELEN MELNICK.

Subscribed and sworn to before me this 18th day of October, 1946. My commission will expire November 30, 1947.

.....

(Seal) EDITH Z. MILLER.